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FEDERAL DEPOSIT INSURANCE  
CORPORATION as Receiver for AMTRUST  
BANK

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Attorneys for Defendants  
BARBARA BERNSTEIN, STEPHEN R. BERNSTEIN  
and STEPHEN ROY BERNSTEIN, as Trustee  
of the STEPHEN ROY BERNSTEIN INTERVIVOS  
TRUST DATED JUNE 1, 1995

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

AMTRUST BANK,  
Plaintiff,  
vs.

CARRIAGE ESTATES, III, LLC,  
BARBARA BERNSTEIN, STEPHEN  
ROY BERNSTEIN, as Trustee of the  
STEPHEN ROY BERNSTEIN  
INTERVIVOS TRUST DATED JUNE 1,  
1995, STEPHEN R. BERNSTEIN,  
PACIFIC CREST COMMUNITIES,  
INC., CRAFTON HILLS 109 LP, A  
CALIFORNIA LIMITED  
PARTNERSHIP, and DOES 1 through  
100, inclusive,

Defendants.

Case No. EDCV-09-02275-VAP (DTBx)

**RULE 26(f) JOINT REPORT RE  
EARLY MEETING OF COUNSEL**

Date: January 31, 2011  
Time: 1:30 p.m.  
Loc.: U.S. District Court  
3470 Twelfth Street  
Courtroom 2  
Riverside, CA

Pursuant to Federal Rule of Civil Procedure 26(f), Plaintiff Federal Deposit Insurance Corporation as Receiver for AmTrust Bank ("Plaintiff") and Defendants Barbara Bernstein, Stephen Roy Bernstein, as Trustee of the Stephen Roy Bernstein Intervivos Trust Dated June 1, 1995, and Stephen R. Bernstein ("Defendants") hereby submit this Joint Report<sup>1</sup> of Early Meeting of Counsel.

# **I. SYNOPSIS OF THE CASE**

On or about December 21, 2006, AmTrust Bank as lender, then named Ohio Savings Bank ("AmTrust"), entered into a loan agreement with defendant Crafton Hills 109, LP ("Crafton"), consisting of a land loan in the maximum amount of \$16,350,000 and a unit construction loan pursuant to which Crafton was given a revolving credit line

<sup>1</sup> Plaintiff's counsel attempted on numerous occasions prior to the Court's deadline to confer with Defendants' counsel regarding the discovery plan and the content of the Rule 26(f) Joint Report, including a letter sent to now-prior counsel for Defendants on January 5, 2011. However, Plaintiff's counsel was informed on January 6, 2011, that Defendants were now represented by a new attorney, Mr. Kashani. Accordingly, Plaintiff's counsel promptly attempted to contact Mr. Kashani, sending him an email on January 6, 2011. On January 7, 2011, Plaintiff's counsel again attempted to contact Defendants' new counsel, by both email and telephone. Plaintiff's counsel was never contacted by Defendants' counsel. Defendants' substitution of counsel was approved by the Court on January 11, 2011. Plaintiff's counsel was able to reach Defendants' new counsel by phone briefly on January 14, 2011, at which time Defendants' counsel requested additional information before he could complete the process of conferring with respect to discovery issues under Rule 26. Defendants' counsel further requested that Plaintiff's counsel send him an email with her contact information. Plaintiff's counsel emailed him with her contact information promptly on January 14, 2011, and sent him the other information he had requested on January 19, 2011, and inquired as to his availability to finish conferring regarding the Joint Report. After hearing nothing in response to this email, Plaintiff's counsel drafted this Joint Report and sent it to Defendants' counsel the morning of January 21, 2011, asking him to provide his clients' additions by the end of the day. At the end of the day, after hearing nothing from Defendants' counsel, Plaintiff's counsel again sent him an email requested that he call or email her as soon as possible to discuss the Joint Report. In spite of these multiple attempts by Plaintiff's counsel to confer with Defendants' counsel, Defendants' counsel never responded to Plaintiff's counsel and never finished conferring with Plaintiff's counsel as ordered by the Court. Although Plaintiff has attempted to incorporate Defendants' contributions into this Joint Report as much as Plaintiff has been able to glean their positions from the brief conversation with Defendants' counsel, Plaintiff cannot say for certain whether this Joint Report reflects Defendants' position with respect to a discovery plan and the other matters contained in the Joint Report.

1 in the amount of \$15,000,000. Pursuant to this loan agreement, AmTrust agreed to  
 2 loan to Crafton a total of \$31,500,000. The money was to be used to purchase land and  
 3 construct single family homes as part of a development in San Bernardino County,  
 4 California.

5 At the time of the loan agreement, Defendants, as well as defendants Carriage  
 6 Estates III, LLC ("Carriage Estates") and Pacific Crest Communities, Inc. ("Pacific  
 7 Crest") each separately executed and delivered an Unconditional and Continuing  
 8 Guaranty and Indemnity Agreement (as to Defendants, the "Guaranties") in which each  
 9 of them separately provided absolute and unconditional guaranties for the full and  
 10 prompt payment of any principal, interest, premiums, penalties and late charges not  
 11 timely paid by Crafton with respect to the loan.

12 AmTrust filed this lawsuit on or about November 20, 2008 after Crafton  
 13 breached the loan agreement by, inter alia, failures to timely repay a protective advance  
 14 in the amount of \$189,035, to effect the release of mechanic's liens on the property, to  
 15 resolve stop notices, to timely pay unit construction loans upon maturity, and to make  
 16 monthly payments due under the loan agreement.

17 Crafton, Carriage Estates, and Pacific Crest all failed to file timely answers, and  
 18 their defaults were entered on January 6, 2009 (as to Carriage Estates and Pacific Crest)  
 19 and on May 29, 2009 (as to Crafton). Defendants answered the Complaint on January  
 20 14, 2009. No cross-complaints or counterclaims have been asserted. AmTrust filed a  
 21 First Amended Complaint on or about March 4, 2009. Subsequently, AmTrust  
 22 foreclosed on the subject property, which was sold at a trustee's sale in March 2009.

23 On December 14, 2009, the trial court granted AmTrust's ex parte application  
 24 for an order substituting Federal Deposit Insurance Corporation ("FDIC") as Receiver  
 25 for the successor to AmTrust in this action, and the First Amended Complaint was  
 26 amended to reflect this substitution. On or about December 14, 2009, this action was  
 27 removed to the United States District Court for the Central District of California.  
 28

## 1 **II. LEGAL ISSUES**

2 AmTrust's First Amended Complaint asserts causes of action for breach of  
3 contract against all defendants except Crafton, breach of the implied covenant of good  
4 faith and fair dealing against all defendants except Crafton, and for appointment of a  
5 receiver against Crafton (as well as the Doe defendants). The receiver was discharged  
6 in state court.

## 7 **III. DAMAGES**

8 At the time of the trustee's sale, \$16,094,177.90 was reflected as due in the  
9 Trustee's Deed Upon Sale as of March 27, 2009. \$6,450,000 was obtained at the  
10 trustee's sale that same day. Thus, as of the date of the trustee's sale, a deficiency of  
11 \$9,644,177.90 remained on the loan. Interest has accrued following the trustee's sale at  
12 a rate of \$3,073.68 per day, leaving a balance due at the time of the filing of this report  
13 of \$11,697,396.14 plus attorney fees.

## 14 **IV. DISCOVERY AND EXPERTS**

### 15 **A. Discovery Plan**

#### 16 Current Status of Discovery:

17 Discovery conducted to date: While this case was in state court, AmTrust  
18 propounded form interrogatories to defendant Stephen Bernstein, which he responded  
19 to. Defendants propounded on AmTrust form interrogatories, special interrogatories,  
20 and requests for production of documents, and AmTrust timely responded.

#### 21 No Required Changes of Limitations on Discovery Under Federal Rule of Civil 22 Procedure § 26(a):

23 Plaintiff does not propose any changes to the timing, form or requirement for  
24 disclosures under Rule 26(a).

#### 25 Subjects on Which Discovery May Be Needed:

26 Anticipated further discovery by Plaintiff consists of the depositions of each of  
27 the three Defendants regarding the execution of the Guaranties and the loan documents,  
28

Defendants' breaches of the Guaranties, the affirmative defenses raised by Defendants, and any other issues Defendants may raise throughout the course of the litigation.

At this time, it is not anticipated that discovery should be conducted in phases or be limited to or focused on particular issues. Plaintiff anticipates that discovery should be completed within 120 days.

#### Issues Related to Electronically Stored Information:

Plaintiff does not currently foresee any issues about disclosure or discovery of electronically stored information.

#### Issues Regarding Claims of Privilege:

Plaintiff has not identified any specific privilege or trial preparation issues.

#### Changes or Limitations on Discovery:

At this time, Plaintiff does not foresee any issues requiring changes or limitations of discovery imposed under the existing rules.

#### Timing of Expert Witness Disclosures:

Plaintiff requests that expert witness disclosures be conducted in accordance with Rule 26(a)(2)(C).

### **V. COMPLEXITY**

Plaintiff does not believe that all or part of the procedures of the Manual for Complex Litigation should be utilized.

### **VI. DISPOSITIVE MOTIONS**

Plaintiff may bring a motion for summary judgment with respect to the Defendants' breaches of the Guaranties. Plaintiff requests that the cut-off date for any such motions be set in accordance with Rule 56.

### **VII. SETTLEMENT**

The parties have not engaged in substantive settlement negotiations to date. As indicated in the ADR-01 form that the Court requested by submitted with this Joint Report, Plaintiff proposes Settlement Procedure No. 3, whereby the parties shall appear before a retired judicial officer or other private or nonprofit dispute resolution body for

mediation-type settlement procedures, or Settlement Procedure No. 1, before a discovery magistrate judge.

### **VIII. TRIAL ESTIMATE**

Plaintiff estimates a five to seven day nonjury trial. Plaintiff estimates calling four witnesses.

### **IX. ADDITIONAL PARTIES**

Plaintiff is not aware of any intended motions seeking to add other parties or claims, amend the pleadings, or transfer venue.

### **X. OTHER ISSUES**

Plaintiff is not aware of any other issues affecting the status or management of the case.

DATED: January 24, 2011

FREEMAN, FREEMAN & SMILEY, LLP

/s/ Bethany R. Quinn  
By: BRADLEY D. ROSS  
ARMEN G. MITILIAN  
BETHANY R. QUINN  
Attorneys for Plaintiff  
FEDERAL DEPOSIT INSURANCE  
CORPORATION as Receiver for  
AMTRUST BANK

DATED: January 24, 2011

By: MIR SAIED KASHANI  
Attorneys for Defendants  
BARBARA BERNSTEIN, STEPHEN R.  
BERNSTEIN and STEPHEN ROY  
BERNSTEIN, as Trustee of the  
STEPHEN ROY BERNSTEIN  
INTERVIVOS TRUST DATED JUNE 1,  
1995

**CERTIFICATE OF SERVICE**

I, Brenda Goff, hereby certify that:

On January 24, 2011, Plaintiff Federal Deposit Insurance Corporation as Receiver for AmTrust Bank's **RULE 26(f) JOINT REPORT RE EARLY MEETING OF COUNSEL** was filed electronically. Notice of this filing was sent to all registered parties in the action by operation of the Court's electronic filing system. Parties can access this filing through the Court's system.

Also on January 24, 2011, I deposited in the United States Mail at Los Angeles, California, a copy of the document entitled **RULE 26(f) JOINT REPORT RE EARLY MEETING OF COUNSEL** in an envelope addressed to counsel of record for Defendants, addressed as follows:

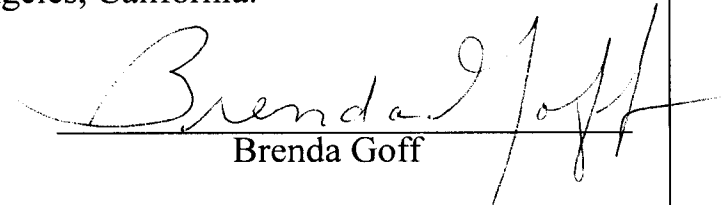
**Mir Saied Kashani, Esq.  
800 West First Street, Suite 400  
Los Angeles, California 90012**

**Tel: (213) 625-4320  
Fax: (213) 652-1900**

**Email: saiedkashani@googlemail.com**

I certify that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

I declare under penalty of perjury that the foregoing is true and correct.  
Executed on January 24, 2011, at Los Angeles, California.

  
Brenda Goff